

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

THOMAS E. PEREZ, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

GREATER COLUMBIA OB-GYN, P.A.  
PROFIT SHARING PLAN, a benefit plan, &  
ESTATE OF SUSAN KEESHAN,

Defendants.

) Civil Action Number: 3:16-cv-1783-JFA

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**COMPLAINT**

Plaintiff THOMAS E. PEREZ, Secretary of Labor, UNITED STATES DEPARTMENT OF LABOR ("the Secretary") alleges as follows:

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq., and is brought by the Secretary under § 502(a)(2) and (5) of ERISA, 29 U.S.C. § 1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of that Title.

2. Jurisdiction over this action is conferred upon the Court by § 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. Venue lies in the District of South Carolina pursuant to § 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

4. Dr. Susan Keeshan is or was the Plan Trustee and acted, on behalf of the Company, as an Administrator of the Plan from approximately January 2011 until the present. Keeshan had the

authority and responsibility to make any and all administrative decisions with respect to the Plan, including making decisions regarding the remittance of employee contributions to the Plan. Therefore, she is or was at all times relevant to this action a “fiduciary” within the meaning of § 3(21)(A) of ERISA, 29 U.S.C. § 1002(21)(A) and a “party in interest” to the Plan within the meaning of § 3(14)(A), (E) and (H) of ERISA, 29 U.S.C. § 1002(14)(A), (E) and (H). Keeshan died on June 25, 2013. To date, Keeshan is still the named Trustee of the Plan. Therefore, Defendant, Estate of Susan Keeshan, has been named as a substitute party.

5. The Greater Columbia Ob-Gyn, P.A. Profit Sharing Plan ("the Plan") is an employee benefit plan within the meaning of § 3(3) of ERISA, 29 U.S.C. § 1002(3), subject to coverage under ERISA pursuant to § 4(a), 29 U.S.C. § 1003(a), and is joined as a party defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to ensure that complete relief may be granted.

6. The Plan was established by the Company in 1998.

7. The Plan currently has approximately ten participants and assets of approximately \$107,638.00 which are held by Ameriprise Financial Services, Inc.

8. Greater Columbia Ob-gyn, P.A. ("the Company") ceased operations in or around August 2013.

9. When it ceased operations, the Company failed to terminate the Plan and ensure that the funds in the Plan were appropriately distributed to participants.

10. The Company failed to administer the Plan and has effectively abandoned it, as a result of which participants are unable to receive information about their funds and are unable to gain access to their funds.

11. The Plan and the participants have been harmed by the Company's abandonment.

12. By causing, allowing or engaging in the acts or omissions set forth in paragraphs 9 and 10, the Defendants breached their fiduciary obligations under ERISA by:

(a) failing to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries of the Plan and for the exclusive purpose of providing benefits and defraying reasonable expenses of plan administration, in violation of § 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);

(b) failing to discharge their duties with respect to the Plan with the requisite degree of care, skill and prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use the conduct of an enterprise of a like character and with like aims, in violation of § 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

WHEREFORE, pursuant to § 502(a)(2) and (5) of ERISA, 29 U.S.C. § 1132(a)(2) and (5), Plaintiff prays that the Court:

A. Appoint an Independent Fiduciary at the Plan's expense to arrange for termination of the Plan and distribution of its assets.

B. Provide such other relief as may be just and equitable.

Respectfully submitted,

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